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Article 9: Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper

Robert A. Gorfinkle

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First Pennsylvania Banking and Trust Co. v. De Lise, 186 Pa. Super. 398, 142 A.2d 401 (1958)

Since notice of dishonor may be given in any reasonable manner, oral or written, in terms which identify the instrument and state that it has been dishonored, a maker's telephone call to the bank holding the note, advising it of her refusal to pay unless certain things were done, is sufficient.

ARTICLE 6: BULK TRANSFERS

SECTION 6-102. "Bulk Transfer"; Transfers of Equipment; Enterprises Subject to This Article; Bulk Transfer Subject to This Article.

(3) The enterprises subject to this Article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

Market v. College Offset Press, Inc., 6 Pa. D. & C. 2d 519 (1955)

A printing business is not an enterprise under Section 6-102 in the absence of an averment that its principal business is the sale of merchandise from stock.

SECTION 6-111. Limitations of Actions and Levies

No action under this Article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods. . . .

Trau & Loevner v. Routman, 6 Pa. D. & C. 2d 164 (1955)

In a fraudulent debtor's attachment proceeding, it appearing that the alleged fraudulent act was committed more than six months prior to the issuance of an alias writ, the original writ which was issued within six months being invalid, the alias writ must be dismissed on the garnishee's objection under Section 6-111.

ARTICLE 9: SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

SECTION 9-107. Definitions: "Purchase Money Security Interest"

A security interest is a "purchase money security interest" to the extent that it is

- (a) taken or retained by the seller of the collateral to secure all or part of its price; or
- (b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

(Where a cited case interprets only a portion of a Code section only that portion is set out)

Commonwealth v. Two Ford Trucks, 185 Pa. Super. 292, 137 A.2d 847 (1958)

Trucks operated under a bailment-lease agreement were seized for illegal use. The certificate of title named the bailee as owner, the encumbrance of the assignee of the bailor being noted thereon. The seizure occurred after default in payment but prior to repossession. Held, under Section 9-107 the bailor's assignee held a purchase money security interest, retaining only bare legal title prior to repossession after default. As a recorded lienholder, bailor's assignee is entitled to proceeds of sale of truck to extent of its encumbrance.

N.B. This case was decided under the 1953 draft of the Code in which appeared an additional subsection reading: "or (c) taken by a person who for the purpose of enabling the debtor to pay for or acquire rights in or the use of collateral makes advances or incurs an obligation not more than ten days before or after the debtor receives possession of the collateral even though the value given is not in fact used to pay the prices."

SECTION 9-301. Persons Who Take Priority Over Unperfected Security Interests; "Lien Creditor."

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of . . .

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected; . . .

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes . . . a trustee in bankruptcy from the date of the filing of the petition . . . Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest.

In The Matter of Luckenbill, 156 F. Supp. 129 (E.D. Pa. 1957)

Where installment seller filed copies of contract in the office of the prothonotary of the county where the debtor resided before, and with the Secretary of the Commonwealth after, the debtor's voluntary petition in bankruptcy the seller's security interest was not perfected prior to bankruptcy and is subordinate to the interest of the trustee in bankruptcy as a lien creditor under Section 9-301(3). The partial filing did not constitute constructive notice to the trustee and all other creditors of the bankrupt under Section 9-301(1)(c).

(Where a cited case interprets only a portion of a Code section only that portion is set out)

N.B. This case was decided under the 1953 draft of the Code in which Section 9-301(1)(c) read: "(c) a lien creditor who becomes such without knowledge of the security interest before it is perfected;". Section 9-301(3) in this draft contained an additional concluding sentence which read: "A creditor who secures the issuance of process which within a reasonable time results in attachment, levy or the like is a lien creditor from the time of issuance of the process."

SECTION 9-307. Protection of Buyers of Goods

(1) A buyer in ordinary course of business (subsection (9) of Section 1-201) . . . takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

Wiesal v. McBride, 191 Pa. Super. 411, 156 A.2d 613 (1959)

Where automobile dealer sold car out of inventory and subsequently mortgaged the vehicle to a bank pursuant to the provisions of an existing floor plan for which financing statement had been previously filed, purchaser is entitled to a decree ordering assignees of bank and dealer to deliver title to auto free and clear of all encumbrances. Section 9-307 intending to protect buyers in ordinary course of business out of inventory, subsequent mortgage was wholly void as to purchaser.

N.B. This case was decided under the 1953 draft of the Code in which Section 9-307(1) read: "(1) In the case of inventory, and in the case of other goods as to which the secured party files a financing statement in which he claims a security interest in proceeds, a buyer in ordinary course of business takes free of a security interest even though perfected and even though the buyer knows of the terms of the security agreement."

SECTION 9-401. Place of Filing: Erroneous Filing; Removal of Collateral

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

In The Matter of Luckenbill, 156 F. Supp. 129 (E.D. Pa. 1957)

Where installment seller filed copies of contract in the office of the prothonotary of the county where the debtor resided before, and with the Secretary of the Commonwealth after, the debtor's voluntary petition in bankruptcy the seller's security interest was not perfected prior to bankruptcy and is subordinate to the interest of the trustee in bankruptcy. The

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pre-bankruptcy filing being partial under Section 9-401(1) did not constitute constructive notice to the trustee and all other creditors of the bankrupt under Section 9-401(2). A contrary interpretation of Section 9-401(2) would nullify the provisions of Section 9-401(1) which is the primary statutory provision governing where filing shall take place.

N.B. This case was decided under the 1953 draft of the Code in which Section 9-401(2) read: "(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing was proper and with regard to all collateral against any person who has knowledge of the filing of a financing statement which indicates that a security interest in all collateral wherever located was intended."

SECTION 9-501. Default; Procedure When Security Agreement Covers Both Real and Personal Property

(1) When a debtor is in default under a security agreement, a secured party has the remedies provided by this Part, which are cumulative. In addition, he may reduce his claim to judgment, foreclose the security interest by any available judicial procedure, or both. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby.

In Re Adrian Research & Chemical Company, 169 F. Supp. 357 (E.D. Pa. 1958)

A lessor to whom a judgment note secured by personal property was given by lessee secured judgment and levied execution on lessee's property. On lessee's bankruptcy, trustee restrained sale of levied goods and lessor sought reclamation of property. By execution and levy on secured goods lessor chose one of several cumulative but inconsistent remedies available under Section 9-501(1). Having elected to levy he is barred from recovering the goods under a duly recorded security agreement. This holding was reversed on the ground that, apart from the Uniform Commercial Code, the creditor's remedies were not inconsistent. 269 F.2d 734 (3d Cir. 1959) noted 1 B.C. Ind. & Com. L. Rev. 118.

N.B. This case was decided under the 1953 draft of the Code in which Section 9-501(1) read: "(1) When a debtor is in default under the security agreement a secured party may reduce his claim to judgment. If the collateral is accounts, chattel paper, contract rights, or instruments, he may in addition proceed under Section 9-504, or under Section 9-502 for a time and thereafter under Section 9-504. If the collateral is documents, he may in addition proceed under Section 9-504 either as to the documents or as to the goods covered thereby. If the collateral is goods, he may in addition do one or more of the following (except that he cannot accept the collateral

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in discharge of the obligation under Section 9-505 and also recover a deficiency under Section 9-504): (a) foreclose the security interest by any available judicial procedure; (b) take possession of the collateral under Section 9-503; (c) prepare or process the collateral for disposition as provided in Section 9-504; (d) sell and recover a deficiency as provided in Section 9-504; (e) accept the collateral in discharge of the obligation as provided in Section 9-505."

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